

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Hezekiah Esau Baker,

Plaintiff

v.

Las Vegas Justice Court, Traffic Division, et
al.,

Defendants

Case No.: 2:22-cv-01173-JAD-VCF

**Order Adopting Report and
Recommendation and Dismissing Action**

[ECF No. 7]

The magistrate judge dismissed plaintiff Hezekiah Esau Baker's complaint with leave to amend by October 19, 2022.¹ Baker was cautioned that his failure to file an amended complaint by that deadline "may result in a recommendation for dismissal with prejudice."² Baker has filed nothing since that recommendation, so the magistrate judge now recommends that this case be dismissed with prejudice.³ The deadline for Baker to object to that recommendation passed six days ago, and Baker neither objected nor asked to extend the deadline to do so. "[N]o review is required of a magistrate judge's report and recommendation unless objections are filed."⁴ Having reviewed the report and recommendation, I find good cause to adopt it, and I do.

¹ ECF No. 6.

² *Id.* at 4.

³ ECF No. 7.

⁴ *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

1 The law permits a district court to dismiss an action based on a party's failure to comply
 2 with a court order.⁵ In determining whether to dismiss an action on this ground, the court must
 3 consider: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 4 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 5 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁶

6 The first two factors, the public's interest in expeditiously resolving this litigation and the
 7 court's interest in managing its docket, weigh in favor of dismissal of this action. The third
 8 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption
 9 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the
 10 court or prosecuting an action.⁷ The fourth factor—the public policy favoring disposition of
 11 cases on their merits—is greatly outweighed by the factors favoring dismissal.

12 The fifth factor requires the court to consider whether less drastic alternatives can be used
 13 to correct the party's failure that brought about the court's need to consider dismissal.⁸ Courts
 14 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 15 explore possible and meaningful alternatives.”⁹ Because the previous dismissal left no claims
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17 ⁵ See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply
 with an order requiring amendment of complaint).

18 ⁶ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 19 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).


⁷ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

20 ⁸ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
 21 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
 22 accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
 23 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of last drastic
 alternatives prior to disobedience of the court's order as satisfying this element[.]” i.e., like the
 “initial granting of leave to amend coupled with the warning of dismissal for failure to
 comply[.]” have been “eroded” by *Yourish*).

⁹ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 pending, this action cannot proceed until and unless plaintiff files an amended complaint. The
2 only alternative is to enter a second order setting another deadline. But the reality of repeating
3 an ignored order is that it often only delays the inevitable and squanders finite resources along
4 the away. The circumstances here do not indicate that this case will be an exception: there is no
5 hint that the plaintiff needs additional time nor evidence that he did not receive the court's order.
6 Setting another deadline is not a meaningful alternative given these circumstances. So the fifth
7 factor favors dismissal.

8 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
9 dismissal. IT IS THEREFORE ORDERED that the Magistrate Judge's Report and
10 Recommendation [ECF No. 7] is **ADOPTED** in its entirety. This case is **DISMISSED** with
11 prejudice. The Clerk of Court is directed to ENTER JUDGMENT accordingly and CLOSE
12 THIS CASE.

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U.S. District Judge Jennifer A. Dorsey
Dated: December 20, 2022
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